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YOUNG OFFENDERS IN SABAH

BY

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PERAKUAN KEIZINAN

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Fakulti Undang-Undang,
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Mark Koding.

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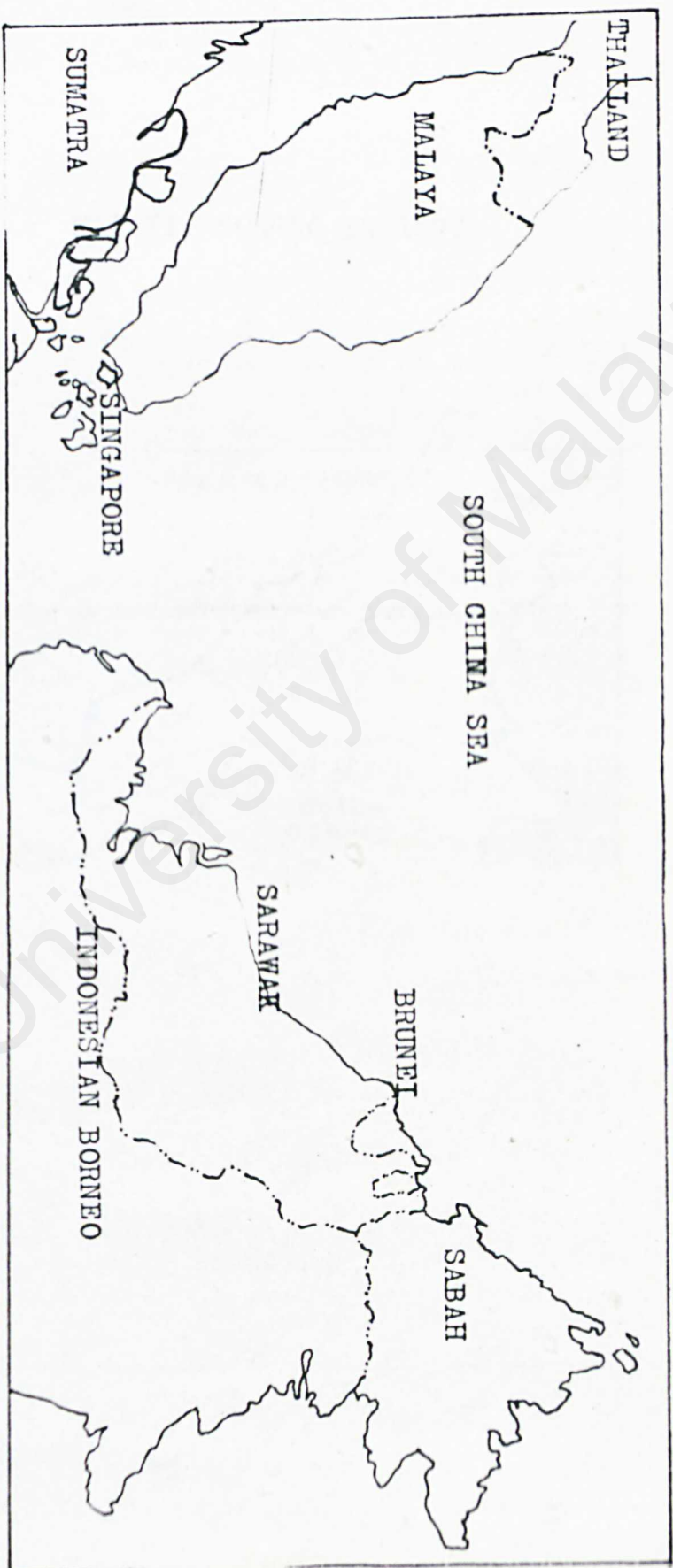
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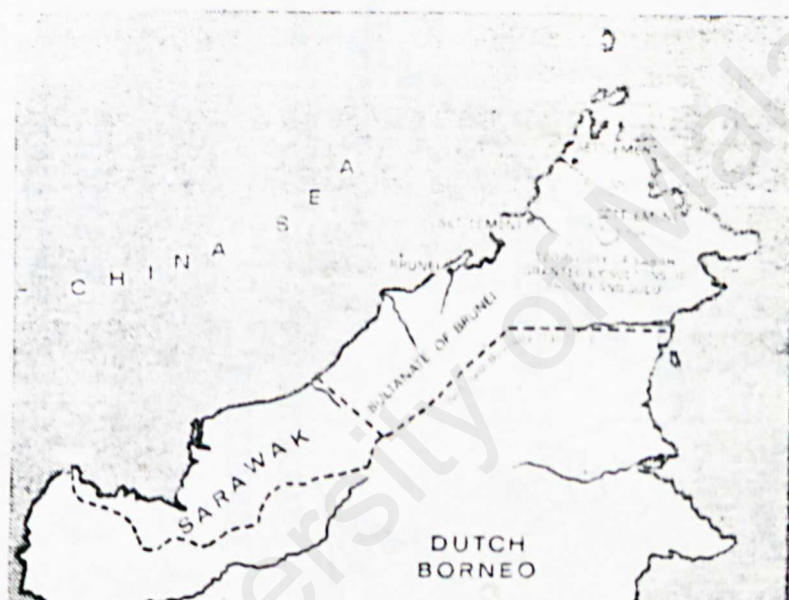
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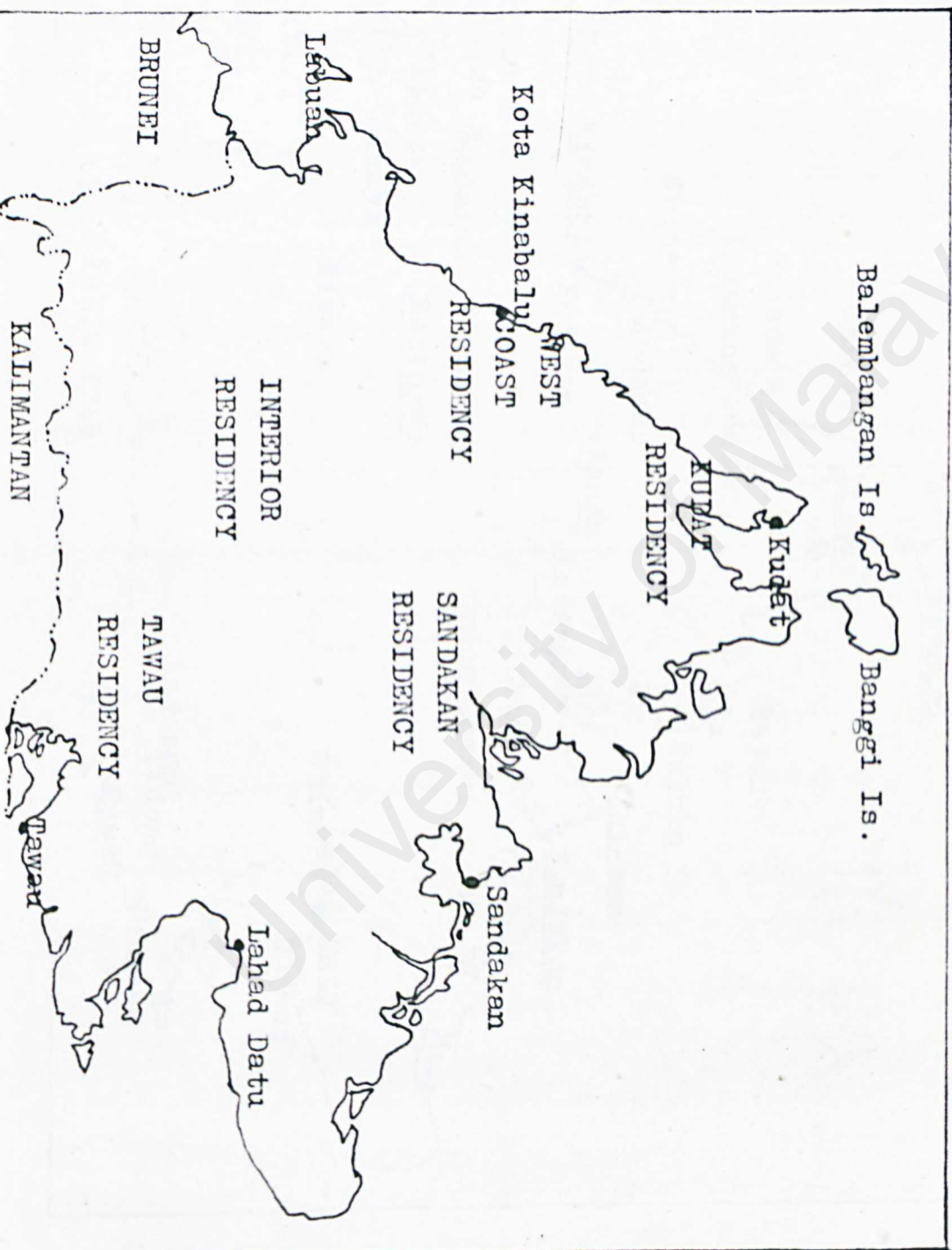
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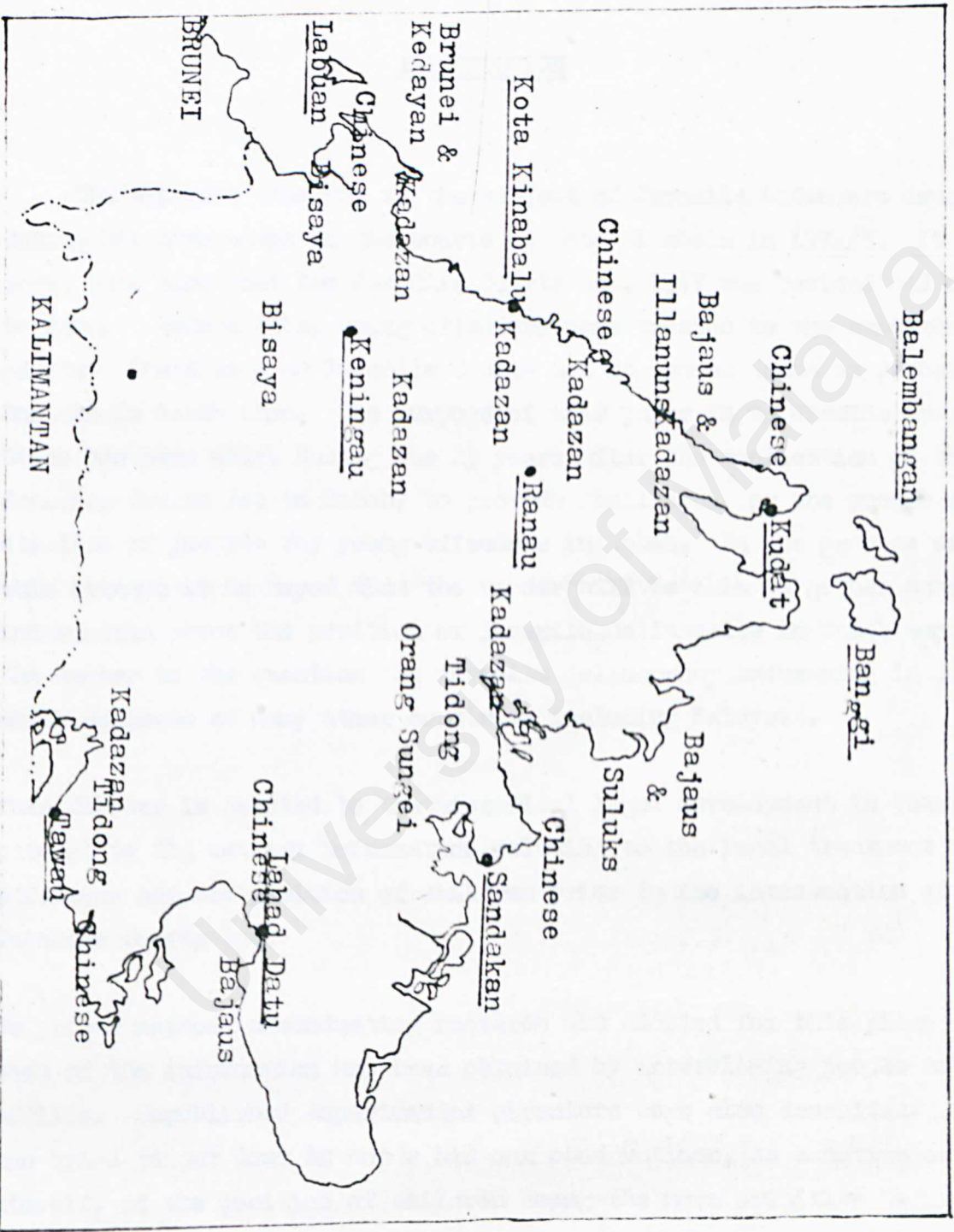
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CHAPTER 1

INTRODUCTION

The writer's interest in the subject of Juvenile Offenders developed during his attachment to the courts at Kota Kinabalu in 1972/3. It was about this time that the Juvenile Courts Act, 1947 was revised and extended to Sabah. Before this, young offenders were treated in the same manner as adults. There were no Juvenile Courts and no Boarding Homes or Probation Hostels in Sabah then. The purpose of this paper is to examine how far Sabah has been able, during the 2½ years after the application of the Juvenile Courts Act to Sabah, to provide facilities for the proper administration of justice for young offenders in Sabah. In the process of pursuing this attempt it is hoped that the reader will be able to gather some basic information about the position of juvenile delinquents in Sabah especially the answer to the question 'Is juvenile delinquency increasing in Sabah?' which concerns so many other countries including Malaysia.

This Chapter is devoted to the historical legal development in Sabah in an attempt to dig out any information relating to the legal treatment of young offenders and the position of children prior to the introduction of the Juvenile Courts Act.

No proper method in conducting research was adopted for this piece of work. Most of the information has been obtained by interviewing people of all walks of life. Unpublished Departmental circulars were also consulted. The writer has tried to put down in words his own observations, as a native of Sabah himself, of the position of children among the more primitive natives of Sabah.

In Chapter II the writer deals with the provisions of the Juvenile Courts Act as revised in 1972 and amended in 1975. Chapter III is devoted to an examination of the causative factors contributing to juvenile delinquency in Sabah. In Chapter IV he tries to include in his discussion some of the conventional preventive and remedial measures in connection with young offenders. Chapter V goes on further to explain briefly what institutional rehabilitation and reformation are with particular reference to Sabah. The concluding chapter discusses what little has been done and what recommendations have been proposed regarding treatment of young offenders in Sabah.

Collection of sources including data was done during the writer's attachment to the Department of Welfare Services (Sabah) in April and May 1975. It was during this time that the writer had the opportunity of accompanying the Probation Officer to attend Juvenile Courts sittings in Kota Kinabalu, to visit the Remand Home/Probation Hostel and the Henry Gurney School, all in Kota Kinabalu.

A BRIEF HISTORY OF SARAWAK

The Coming of the Chinese

The history of Sabah before the arrival of the first Europeans is almost totally unknown¹. In 1300 Borneo was invaded by Kublai Khan, the ruler of the great Moghul Empire. There are still some indications of old Chinese civilisations such as the jars being used by the natives in Sabah. Agricultural methods of some tribes especially the Dusuns are of Chinese influence. About the same period there was established a Chinese Province somewhere in the northern part of the island of Borneo.²

The First Europeans to come

The first visit of Borneo by the Europeans was made by the Spaniards and the Portuguese in the early fourteenth century. The Dutch in Malacca had contact with North Borneo as early as 1640.

The English

The first Englishman to come to Sabah was one Captain Cowley in 1665. In 1773, the East India Company founded a station in Balambangan, an island at the northern tip of Sabah, but this was abandoned when it was attacked by the Sulus. It was formed again in 1803 only to be closed again in the following year. In 1839 James Brooke, who later became the White Rajah, came to Sarawak. He helped to suppress piracy in Borneo. In 1846, Captain Munday hoisted the British flag in Labuan. Labuan was later ceded to the British by the Sultan of Brunei.²

The American

In 1865, an American named Lee Moses obtained land in Sabah from the Sultan of Brunei the latter apparently forgetting that this land had already been given to the Sultan of Sulu in perpetuity. Lee Moses sold his 10 year lease of Sabah to an American Trading Company.³

1. Baker, North Borneo the first 10 years, p. 19

2. A handbook of North Borneo, 1886.

3. Whelan, The Story of Sabah, 1970

Overbeck-Dent Company

In 1875, Baron Overbeck who was an Australian Government officer in Hong Kong, bought the lease from the American Trading Company. He later joined with the Dent Brothers, Merchants of Hong Kong, in a company. This company, in 1877, made an agreement with the Sultan of Brunei under which the company paid \$15,000 per year for most of what is now the state of Sabah. At this time the Sultan of Sulu also asserted a claim over Sabah. He forgot that in 1764 Sabah had been given to the East India Company. In 1878, the Sultan of Sulu gave Sabah to the Overbeck-Dent Company in return for \$5,000 annual payment.

Granting of Charter

Overbeck sold all his share in the company to Alfred Dent. Dent subsequently obtained a Charter from the British Government which was officially given in 1881. In 1882, the company became the North Borneo (Chartered) Company. The Chartered Company continued to rule Sabah until 1946 when Sabah became a Crown Colony.⁴

Sabah gained its independence on August 31, 1963 and joined Malaysia on September 16, 1963.

4. Baker; p. 54-62

THE STATE OF SABAH

Sabah is one of the thirteen states of Malaysia. It occupies the northern part of the island of Borneo. It covers an area of 29,368 square miles. The August 1970 census recorded a total population of 655,295.⁵ Now it is more than 700,000.^{5a}

THE PEOPLES OF SABAH

The population of Sabah, though small, is made up of many races. The indigenous groups - the Kadazans/Dusuns, Muruts, and Bajaus - form the majority.

The Dusuns or Kadazans

The Dusuns or the Kadazans are the largest long settled races in Sabah. The theory has been propounded that they are descendants of the Chinese who formerly visited Borneo. Many Chinese customs are followed by the Dusuns, especially their mode of agriculture. The Dusuns are widely distributed. They once lived in long houses and practised head-hunting but these practices died out when the need for communal protection died out.⁶

Many of the Dusuns have been converted to Islam and Christianity but many are still pagans. The Dusuns are all the other native races of Sabah, have their own laws and customs. It is an immemorial custom of the Dusuns to acknowledge the authority of the Headmen and the Chiefs. In every districts in Sabah today there are Native Courts where the Chiefs and the Headmen sit to adjudicate disputes which are brought before them by native complainants.⁷

5. Sabah's 10th Anniversary of Independence within Malaysia 1973 at p.44

5a. The estimated population of Sabah in 1975 is 747,049 (for Eastern Economic Review, October 3, p.30)

6. Treggoning, Under the Chartered Company, p.167

7. Whelan, The Story of Sabah, p. 4 - 9

The Muruts

The Muruts are another of the long settled native races of Sabah. They are more primitive than the Dusuns. They still live in isolated villages and longhouses or individual houses in the interior parts of Sabah. Most of them are still pagans but many have been converted to Islam and Christianity. Their pagan religion is very much like that of the Dusuns. In many respects the languages and customs of the Muruts and the Dusuns are the same. Their laws cover the same things, that is, inheritance, marriage and care of children, land and agriculture, theft, fighting, harvesting of crops and behaviour in the home and village.⁸

The Bajaus

It is said that they came to Sabah only some 200 years ago. They were formerly one of the great pirate races of Sabah. They trace their ancestry to Johore in Peninsular Malaysia. Bajaus are Muslims and follow the religion, customs and laws of Islam. In the earlier days of their arrival in Sabah they were lawless and arrogant and were greatly feared by the neighbouring tribes. At present they are settled and cause little trouble, gaining their living by fishing, cattle farming and agriculture.⁹

The Malay Tribes

They are found scattered around the coasts and are Muslims.

The Illanuns

The Illanuns are akin to the Bajaus. They are confined to the West Coast Residency.

Orang Sungai

These people are of Dusun stock converted to Islam.

The Kadayans

They are also Muslims and are said to have come from Sumatra.¹⁰

8. Whelan, p. 7-8

9. Whelan, p. 8

10. Baker, North Borneo The First 10 Years, p. 40

NATIVE CUSTOMARY LAW AND THE ADMINISTRATION OF JUSTICE PRIOR TO THE COMING OF THE BRITISH

Immemorial Custom and Islam

All the native races of Sabah have their own laws. Islam came to Brunei as early as the end of the 15th century. The people who embraced the Islamic faith during the several subsequent years, followed, apart from their own customs and adat, the laws and customs of the religion of Islam. Islam could not penetrate deeply into the interior of Sabah so that Islamic influence was restricted to the coastal areas only. On the coasts, therefore, there was a loose system of Islamic law. In the interior the natives settled their own disputes according to tribal customs.¹²

Village Administration of Justice by Headman

As mentioned earlier, it is an immemorial custom of the natives in Sabah to acknowledge the authority of their headmen and chiefs. When the Europeans came to the then North Borneo, they found in existence a body of customs and common law, receiving binding force from immemorial usage. The headman of each village administered justice.¹³ The headman is selected leader on account of his outstanding fitness and knowledge of custom and adat. In some villages the position of a headman is hereditary. In adjudicating disputes, the headman also consults the elders for among people to whom writing is unknown they are the historians and it becomes necessary for the younger headmen to refer to them for precedents for settlements of disputes. The headman has no definite Code by which to work. He is almost invariably swayed by public opinion in both judicial as well as other matters. In fact the consensus of the opinion of local elders forms the basis of evidence in any settlement according to adat.¹⁴

Native Customary law falls into three main headings: offences against the person, offences against property and offences against the community.¹⁵

12. North Borneo Annual Report, 1947 p.23

13. Owen Rutter, The Rulers of North Borneo, 1928

14. Ibid.

Meaning of Justice Under Adat Law

The meaning of justice or law under adat law is much wider than its meaning as understood according to Western Legal Systems. Under Adat law, law not only brings about fairness and justness but it is also a process which can correct a disrupted social balance so that peace and tranquility may be restored again. Law in Adat Law cannot be separated from the surrounding world and the social structure of a community (adat law community). In an adat law community, courts as understood under Western legal systems are non-existence. The native courts that we find now are not of native origin but of Western invention.¹⁶

What is original to the adat law community is a council of elders headed by the headmen of the adat law community. Even the term 'adat law' is an invention of the colonialists.¹⁶

Settlements of disputes results from consultation and consensus among the elders in the council. In any adjudication of disputes the emphasis is not on its legal aspects in terms of law.¹⁷ What is more important is the overall settlement of disputes that can bring about peace and order in the community. The native courts that are found in Sabah, now, are based on the Western legal system where the emphasis is on law.¹⁸

NATIVE COURTS SYSTEM

Breaches of native customs and adat are tried by native courts. The Native Courts are established under the provisions of the Native Courts Ordinance, Cap:86 of 1953 and have jurisdiction in the following matters:

-
16. Abdullah Siddik, Pengantar Undang-Undang Adat di Malaysia 1974, p.100
 17. J.F. Hollerman, Indigenous Administration of Justice, p. 43
 18. Abdullah Siddik, p.100

- a) in cases arising from breach of native law or customs where all the parties are natives;
- b) in cases arising from breaches of native customs and law, religion, matrimonial and sexual... where one of the parties is a native;
- c) in cases arising from breach of muslim law and customs in which all the parties are muslims;
- d) in civil cases where the amount in dispute does not exceed fifty dollars in which all parties are natives; and
- e) in matters connected with land where no document of title has been issued by the Land Department in which all parties are natives.¹⁹

Inheritance is not mentioned so that one may ask whether Native Courts can try inheritance cases.

Punishment for Offences against Native Customs

For offences against native law or custom a Native Court may impose a fine or may order imprisonment, or may inflict any punishment authorised by native law or custom that is not repugnant to natural justice and humanity. The punishment must also be proportionate to the offence.²⁰

THE POSITION OF CHILDREN

Infant mortality among the more primitive natives of Sabah is high. This is one of the reasons why children enjoy a privileged position. Children are treasures to the pagan races. Although they are not spoiled or pampered they are seldom corrected.²¹ But they do suffer from beatings

19. Ibid, p.108, (Abdullah Siddik)

20. North Borneo Annual Report, 1956

21. Owen Rutter, The Pagan of North Borneo, p.73

and whippings for serious misbehaviour, as for example, laziness, (a pagan child is by nature hardworking.) But this position has changed over the several years. Personal observance and experience show that nowadays there are cases of serious maltreatment by parents of their children but the number is by no means appalling.

In the simpler primitive life, young offenders are very rare indeed. From a very early age the children share the toil and hardships of their parents. They work as junior partners and not subordinates. For the young pagan, childhood hardly exists. He steps almost directly from infancy to adolescence. Almost as soon as he can walk he assumes many of the duties of the adults. The boys help their father in the field, in the jungle or river.²² There is hardly any chance of straying. When the child is not doing any work he occupies himself with other indoor chores such as learning to weave baskets, to handle primitive tools, namely, the spear and blowpipe and to make fishing and hunting traps. Of course there are cases of minor thefts but these can be disregarded, as minor stealing is just a normal event in the child's growing up experience. Any term corresponding to 'delinquency' is non-existent among the primitive natives.

Physical development in primitive native girls is fast and a girl gets married at the age of 12 or 13.²³ In Western countries girls become prone to committing offences and subsequently becoming young offenders at this age. On the other hand, a native girl at the corresponding age is ready to assume the responsibilities of a mother.

22. Owen Rutter, p.73

23. Ibid.

UNDER THE RULE OF BRUNEI

Under the rule of the Sultanate of Brunei the country was divided into fiefs which were allotted to nobles. The main object was to extract, by fair means or foul, all the resources available in Sabah at that time, Customs of the natives, however immemorial, and justice itself, counted for nothing if the feudal lord's interests were involved. As a result the age-long authority of the village headmen ceased and the whole system of village administration was undermined.²⁴ There were troubles everywhere. No report is available on young offenders probably because there was no system of courts and this explains the lack of statistics relating to this matter.

UNDER THE CHARTERED COMPANY (1881 -1946)

The British North Borneo (Chartered) Company ruled Sabah from 1881 until 1946. Sabah was made a protectorate from 1881 until 1946. By its Charter the Company was required to abolish slavery, to administer justice with due regard to native customs and laws and not to interfere with the religion of the inhabitants.²⁵

Creation of Courts and Judicial System

Before the coming of the Chartered company there was no court of arbitration to which warring factions could appeal.²⁶ The Chartered Company found it necessary to establish courts on eastern lines. Power to create courts was given under its charter.²⁷ The judicial system was analogous to that in force in India at that time where the Governor was the president of the High Court. The Residents were judges of the

24. Owen Rutter, The Rulers of North Borneo, p.27

25. Ahmad Ibrahim, Towards A History of Law in Malaysia, and Singapore, 1970 at p.74

26. Owen Rutter, p.203

27. A handbook of North Borneo, 1886 at p.44

Appeal Courts and magistrates of the Districts. There were other magistrates and justices of the peace. Justice in these courts was based on the Indian Penal Code, Criminal Procedure Code, Evidence Act and Civil Procedure Code with amendments. Apart from the adopted Indian Acts there were other ordinances of the state. Ordinances were enacted by the Governor assisted by a Legislative Council consisting of the higher officers of the Government and leading native chiefs. The government looked to the native chiefs and headmen to maintain order within their districts.²⁸ As mentioned earlier, the headmen were disregarded under the rule of the Sultan of Brunei. But under the Chartered company, the village under the headmen, became once more a unit of the government.²⁹ People who broke the law were sent to prisons after being convicted in court. There were prisons in Jesselton (now Kota Kinabalu) and Sandakan.

Under the Japanese (1942 - 45)

The Japanese occupied Sabah from 1942 until 1945, a period of about 3½ years. Life became very hard for the people in Sabah during the Japanese occupation. People once more took to the jungle. The presence of the Japanese provided an excuse for the natives, especially the Muruts, to resort to or to revive head-hunting again.³⁰ However, law remained substantially unchanged, Headmen were appointed as Magistrates. Offenders caught red-handed were dealt with summarily on the spot. Prisoners were mainly political.³¹

COLONIAL RULE (1946 - 1963)

After the Second World War, the chief towns had been destroyed. The people had fled to the jungle. Crime was rampant. The whole process of government came to a standstill as most of the government records had been destroyed.³²

28. Ibid, at p. 103

29. Rutter, p. 29

30. F.G. Whelan, p. 50

31. Baker, North Borneo the First 1 Years, p. 29

When the colony came into existence on July 15, 1946, the law in Labuan was different from that in the mainland. In the former the whole body of the law of the Straits Settlements applicable before the war remained in force. On the mainland it was the laws of the Chartered Company that were applicable.³³

Unification of Laws

A unification of the laws was necessary. This process began in 1947. In 1951 the revised edition of the Laws Ordinance authorised the preparation of a comprehensive edition of laws.³⁴

The laws applicable to the colony as at 1st January, 1947 fall into 5 divisions:

1. Ordinances of the State of North Borneo.
2. Straits Settlements Ordinances still applicable to Labuan.
3. British Military Administration Proclamations.
4. Essential and Emergency Regulations.
5. Ordinances of the Colony of North Borneo.³⁵

The system of courts of the colony for the administration of civil and criminal law were:

1. The High Court;
2. Sessions Courts;
3. Magistrates Courts;
4. Native Courts.³⁵

The system of criminal law was based on the Indian Penal Code with amendments. The Indian Criminal Procedure Code and the Civil Procedure Code as amended governed the procedures of these courts.³⁶

33. Baker, H.B. The First Ten Years, p.54

34. Ibid, p.55

35. North Borneo Annual Report, 1947, p.30 - 32

36. Ibid, p.32

Legal Department

There was also a Legal Department. It provided officers to conduct the prosecution and defence in trials of civilians. The Legal Department was extensively used during the MA period to deal with drafting of proclamations. It must be noted here that when the British Military Administration handed over to the civil government, it had in the main restored law and order. Serious crimes had been reduced to negligible proportions.³⁷

Reception of English Law (1946 - 1963)

Sabah was a protectorate from 1888 until 1946, and therefore there could have been no reception of English law until relatively late. It began with the North Civil Law Ordinance, 1938. The reception of English law in Sabah was formalised by the North Borneo Application of Laws Ordinance, 1951. This provided that the Common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of the Ordinance, should be the law enforced in North Borneo with the proviso that the said common law doctrines of equity and statutes of general application should be in force so far only as the circumstances of North Borneo and its inhabitants permit and subject to the qualification as local circumstances and native customs render necessary.³⁸ The position is now governed by the Civil Law Act, 1956, amended in 1972 and made applicable to the whole of Malaysia.

Reorganisation of Courts System

The Courts system was reorganised from the end of the year 1951. It was at this time that the courts of Sarawak, Sabah and Brunei were unified. One Supreme Court was established for the three territories which consisted of a Chief Justice and as many puisne judges appointed from time to time. The High Court sat chiefly in Jesselton (now Kota Kinabalu.) but went on circuit to the principal centres of the colony as required.³⁹ Its distinct from the ordinary courts were the Native Courts discussed earlier in this paper.

37. Ibid, p.55

38. Ahmad Ibrahim, Towards a History of Law in Malaysia and Singapore, at p.76

39. North Borneo Annual Report, 1951, p.64

Combined Judiciary for Sabah, Sarawak and Brunei

In 1952 the combined Judiciary for the three territories established the following hierarchy of courts:

1. The Supreme Court of Sarawak, comprising;
 - a. The Court of Appeal;
 - b. The High Court.
2. Magistrates, comprising courts of;
 - a. Magistrates of the first class,
 - b. Magistrates of the Second class,
 - c. Magistrates of the third class.⁴¹

System of Criminal Law

The system of criminal law that was practised during the Chartered Company rule continued under the Colonial rule. Criminal law was and still is based on the Indian Penal Code with amendments. A new Criminal Procedure Code was introduced in 1953.⁴² In 1959 entirely new Penal Codes and Criminal Procedure Codes were enacted for Sabah and Sarawak. In view of the fact that North Borneo and Sarawak have a combined judiciary the new ordinances enacted in NB were related as closely as possible to those already enforced in Sarawak.⁴³

PRISONS

The prisons in Sandakan and Jesselton during the Chartered Company rule were completely destroyed during the Second World War so new ones had to be built. The central prison in Kota Kinabalu was completed and first occupied in 1954.⁴⁴ Classification of prisoners included; among others,

- a. young prisoners (aged 16 - 21)
- b. young prisoners male and female (aged below 16)

41. Ibid. p. 92

42. North Borneo Annual Report, 1951, 1953

43. IBAR. 1959, p.110

44. IBAR. 1954

Juvenile Courts

There were no Juvenile Courts and the condition of the prisons was such that it was impossible to segregate the young offenders or prisoners from the adults although it was felt desirable⁴⁵. In order to provide more suitable treatment for young offenders the Government came to an agreement with the Government of Sarawak whereby an approved school in Kuching could be used.⁴⁶ The Prisons Ordinance (cap. 108) was amended in 1951 so that the Governor was empowered to transfer any young offender to an approved school or to a place of detention in Sarawak or in Singapore.⁴⁷ The colony of North Borneo had a low incidence of juvenile delinquency. It was not considered necessary to build Remand Homes or to set up Special Children's Court.⁴⁸ Young offenders had to be tried in the ordinary Magistrates courts. The only difference was that the young persons were not required to go into the dock. Under the Sabah Criminal procedure Code first offenders may be released on Probation and wide use was made of this provision by Magistrates particularly in the case of juvenile⁴⁹. This position has now been remedied with the extension of the Juvenile Courts Act 1947 (Revised 1972 and amended 1975) to Sabah. The case that marked the introduction of the Juvenile Courts Act in Sabah is the case of PP v. TOVOBSON (1973) (unreported), decided in the High Court at Kota Kinabalu by Datuk Lee Hui Hoe, J. (As he then was). In this case his Lordship quashed the proceedings in the Magistrates Court as null and void and of no effect for failure to comply with the requirements of the Juvenile Courts Act. It was six months before the State Government could provide the essential requirements under the said Act to enable Juvenile courts to be convened. A Remand Home Probation Hostel has now been built at mile 7½ Tuaran Road, about 7½ miles from Kota Kinabalu. Cases of young offenders have to be referred to the Welfare Services Department.

45. HBAR, 1948 p.45

46. HBAR, 1950

47. HBAR, 1951, 1956

48. HB R, 1952

49. HB R, 1953

CHAPTER II

JUVENILE DELINQUENCY, JUVENILE COURTS AND JUVENILE COURTS ACT

In this chapter 'juvenile delinquency', Juvenile Courts and the Juvenile Courts Act, 1947 (revised in 1972 and amended in 1975) will be discussed, in the same sequence.

The term 'juvenile' has different meanings in different countries and regions but in the Malaysian setting it means a person who has attained the age of 7 and is under the age of 17 years. The maximum age for Sabah has always been 18 and not 17. Previously, in Malaysia, 'juvenile delinquent' was defined to mean a person between the ages of 7 and 17 whose anti-social behaviour is such that he has violated the criminal laws as exist in Malaysia.¹

The Juvenile Courts (Amendment) Act, 1975 raised the upper age-limit to 18. Under the 1975 amendment to the Act the lower age limit which is based on the age of criminal responsibility prescribed in the Malayan Penal Code,² is raised to 10 years by an amendment to the Penal Code.

Causes of Juvenile Delinquency

The Second United Nations Congress on the Prevention of crime and Treatment of offenders had this to say about juvenile delinquency:

"In many countries the meaning of juvenile delinquency is so broad that it embraces practically all manifestations of juvenile behaviour. Under influence of certain theories juvenile delinquency is identified either with the maladjustment or with forms of juvenile behaviour which actually are more a

1. Report of the Seminar on Social work and community,
Kota Kinabalu, 1971, p.29

2. Penal Code, p.82

reflection of poor living conditions than a delinquent inclination. Thus, disobedience, stubbornness, lack of respect, being incorrigible, etc. and the like are considered juvenile delinquency."

There appears to be no single cause which can definitely be pinpointed as the reason for a juvenile turning delinquent. The Ninth International Conference of Social Work considered the following as factors contributing to juvenile delinquency:

- a. Defective mental and physical make up;
- b. Social changes as a result of war, industrialisation, changing structure of society etc;
- c. Changing role of the family, lack of affection and security, bad influence of the cinema, television, magazines, etc;
- d. Inadequate schools, teachers and community recreation sources.

JUVENILE COURTS

Juvenile Courts are magistrates courts specially constituted to deal with young offenders. The law of evidence applies in them as in all criminal courts and in general the procedure in the magistrates courts are followed.³

The fundamental idea of a juvenile court is that the state must step in to act as guardian of a child or young person where adverse social or individual conditions encourage the development of crime. Furthermore, the juvenile court takes the position that the youngster should not be treated as a criminal or legally charged with a crime, but should be held as a ward of state, thus receiving the care, trust and discipline that

3. P.T. Giles, The Criminal Law, p.173

should be accorded to a neglected child, and which should approximate as nearly as possible to such care as should be given by his parents.⁴

The principle of mens rea is related to the juvenile court concept. Under this doctrine a child of 7 is held to be incapable of having the criminal intent which is a necessary ingredient of crime. Between 7 and 14 he is deemed presumptively incapable; and after 14 years he is deemed presumptively capable.

Select Committee to Study Delinquency

As a result of the high incidence of offences committed by the young immediately after the Second World War, the Government set up a select Committee to study and report on the pressing problems of juvenile delinquency. The Committee recommended the following:

- a. Juvenile Courts;
- b. Probation Service and appointment of Probation Officers;
- c. Remand Homes/Probation Hostels and Approved Schools;
- d. Juvenile Welfare Committee.

To implement these recommendations, the Juvenile Courts Ordinance No.38 of 1947 was enacted. With its implementation on 1st December 1949, the Probation and Approved Schools services came into being.⁵

Extension of Juvenile Courts Act to Sabah

The Juvenile Courts Act, 1947 was revised in 1972 and was extended to Sabah in the same year. It came into force in Sabah on 1st October, 1972 by virtue of Gazette Notification s.32 published in the Sabah Gazette second supplement dated September 7.

4. Edward Eldfonso, Law Enforcement and the Youthful Offender, 2nd edn., p. 133-134

5. Malaysia Year Book, 1973, p.451-457

Section 3 of the Act reads:

"Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offends, no child or young person when alleged to have committed the offence shall be arrested, detained or tried except in accordance with this Act."

The Act provides for the care and protection of children and young persons and the establishment of Juvenile Courts. Before the coming into force of this Act in Sabah young offenders were tried in the Magistrates Courts like adults. Until the Juvenile court could function young offenders had to suffer because they could be remanded in the custody of the police for a considerable period of time unless their cases could be dealt with expeditiously⁶. With the establishment of the Remand Home/ Probation hostel at mile 7½ Tuaran Road, young offenders are now remanded there pending disposal of their case.

Now that the Act is in force in Sabah the proper court to deal with juveniles is the Juvenile Court. The magistrate no longer has jurisdiction to deal with juveniles other than under the Act. Thus, in the case, of PP v. Tovodsoh,⁷ decided in the High Court at Kota Kinabalu, an order made by a magistrate under section 241(1) (d) of the Sabah Criminal Procedure in respect of a young offender was quashed by Datuk Lee Han Hoe, J (as he then was) as being null and void and of no effect. His Lordship also declared the proceedings before the magistrate null and void.

Jurisdiction of Juvenile Courts

A juvenile court established under section 4 of the said Act has jurisdiction to try all offences except offences punishable with death. Sub section 5 of the same section provides that save as modified or extended by the Juvenile Courts Act, the provisions of the Criminal Procedure Code shall apply to the juvenile court.

6. p.p.v. Tovodsoh (1973) unreported.

7. Ibid.

PROCEDURE IN JUVENILE COURT

Under section 5 of the Juvenile Courts Act, the court shall, if practicable, sit either in a different building or room from that in which sittings of courts other than juvenile courts are held, or in different days from those on which sittings of those other courts are held.

All proceedings in the juvenile court are held in camera. This means that only the young person, his parents and counsel (if needed) and their witnesses are present; the court clerks, police Prosecutor, Probation Officer and other members of the court, may attend the trial. Bone fide representatives of newspapers or news agencies may be present, but they are restrained from revealing the names and addresses of juvenile involved in the case.⁸ The Juvenile Court is presided over by a magistrate assisted by two advisors, one of whom must be a woman and both of whom must be members of the Panel of Advisors. Their function is to inform the juvenile court with respect to any consideration affecting the juvenile cases. The absence of any one of them renders the proceedings unlawful.⁹

At the commencement of the juvenile hearing, the court explains to the juvenile as soon as possible in simple language the substance of the alleged offence. After explaining the substance of the alleged offence, the court (Juvenile Court) shall ask the juvenile whether he admits the facts constituting the offence. If the juvenile person does not admit the facts constituting the offence, the court shall then hear the evidence of the witnesses in support thereof. At the close of the evidence in chief of each witness the juvenile (and if the court thinks fit, his parents or guardian) shall be asked if he wishes to put any question to the witness, and, if he so wishes, shall be permitted to do so. If the juvenile instead of asking questions wishes to make a statement, he shall be allowed to do so. It is the duty of the court to put to the

8. Section 5A, Juvenile Courts Act, 1947 (Revised 1972 & amended 1975)

9. F. H. Gries, Singapore Juvenile Delinquency Proceedings,
(1967) MLR 305.

witnesses such questions as appear to be necessary. If it appears to the court that a prima facie case is made out, the court shall explain to the juvenile the substance of the evidence against him and, in particular any points therein which specially tell against him or require explanation and the juvenile shall be allowed to give evidence upon oath or affirmation or to make a statement if he so desires and the evidence of any witness for the defence shall be heard.¹⁰

If the juvenile admits the offence or the juvenile court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Immediately after this the Probation Officer is called to present his reports as to the juvenile's general conduct, home surroundings, school records and medical history. The reports help to enable the court to deal with the case in the best interest of the juvenile. If the juvenile admits the offence or the court is satisfied that it is proved, and the juvenile court decides that remand is necessary for the purpose of inquiry or observation, the juvenile court may remand him accordingly.¹¹

Powers of Juvenile Court

The powers of a juvenile court are enumerated under section 12 of the Act, and the powers shall be exercised in addition to any other powers exercisable by virtue of this Act or any other law for the time being in force.¹²

The Juvenile Court has power:

- a. to admonish and discharge the offenders;
- b. to discharge the offender upon his entering a bond to be of good behaviour and to comply with such orders as may be imposed;
- c. to commit the offender to the care of a relative or other fit person;

10. Juvenile Courts Act, Section 10 (5)

11. Juvenile Courts Act, 1947 S.10 (7)

12. Ibid. S. 12(1)

- d. to order his parents or guardian to execute a bond to exercise proper care and guardianship;
- e. without making any other order, or in addition to an order under paragraph (b), (c), (d), (g), or (h) to make an order placing the offender for such specified period as the juvenile court may think fit under the supervision of a Probation or some other person appointed for the purpose of the Juvenile court and any such order may require the offender to reside for a period not exceeding 12 months in a Probation Hostel;
- f. to order the offender to be sent to an Approved School or Henry Gurney School;
- g. to order the offender to pay fine, compensation or costs; and
- h. where the offender is a young person and the offence is punishable with imprisonment the juvenile court may impose upon him any term of imprisonment which can be awarded by a Sessions Court or, if the juvenile court considers that its powers are inadequate, commit him to the High Court for sentence.

Restrictions on Punishment of Juveniles

Section 15 places restrictions of the punishment of juveniles. Subsection (1) of this section provides that no juveniles shall be sentenced or ordered to be imprisoned for any offence or be committed to prison in default of a fine, damages or costs. Subsection (2) says that no juveniles shall be sentenced or ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine or committal to a place of detention, approved school or otherwise.

+ any reference to court under 'Procedure in Juvenile Court' means the juvenile court.

The word 'conviction' and 'sentence' shall not be used in relation to juveniles dealt with by the Juvenile Courts and any reference in any written law to a person convicted, a conviction and sentence shall, in the case of juveniles, be constructed as finding of guilt or any order made upon a finding of guilt as the case may be.¹³

Power to Order Parents to pay Fine

Section 13 empowers the Juvenile Court to order parents to pay fines instead of the juvenile but no such order shall be made without giving the parents an opportunity to be heard. In LEM SOO HAK v. JP (1955) 21 MLJ 44, the Juvenile Court recorded a conviction and made an order for a fine of \$1,000 to be paid by the father of the appellant juvenile. The record of the trial did not show whether the father was present at the trial; nor was there any record that he was asked what he had to say. It was held by the appellate court that there was a breach of section 13(4) of the Juvenile Courts Act, 1947, which provided that no order shall be made against a parent or guardian without giving them the opportunity to be heard.

JUVENILE COURTS (AMENDMENT) ACT, 1975

In its effort to bring the law in line with modern trends of thought the Parliament has amended the Juvenile Courts Act, 1947. Among the principal changes made are:

- a. 'Juvenile' as defined means a person between the ages of 7 and 17. Clause 2 (c) raises the upper age limit to 18 and clauses 2 (c) and 4 make consequential amendments. The lower age limit which is based on the age of criminal responsibility as prescribed in Section 82 of the Penal Code is raised to 10 years by an amendment to the Penal Code. Clause 2 (c) amends the above definition by tying it with section 82 of the Penal Code.

- b. Clause 6 amends section 5 to enable representatives of newspapers and news agencies to attend sittings of Juvenile Courts while clause 7 inserts a new section 5A to prohibit newspapers revealing the names and addresses of juveniles involved in court proceedings.
- c. Clause 9 amends section 7 relating to separation of juveniles from adults offenders and provides for girls to be under the care of women.
- d. Clause 11 introduces a new section 8A requiring the police officer or other person who arrests a juvenile to inform the Probation Officer and the parents or the guardian of the juvenile to avoid delay in the disposal of his case.
- e. Clause 20 amends section 31 by providing that every juvenile shall, after the expiration of the period of his detention at an Approved School be under the supervision ('after-care') for a period of one year. The effect of this provision read with the amended definition of 'juvenile' will be to extend the period of supervision for one year from the date which that period of detention expires, for every person discharged from an approved school irrespective of his age at the date of his discharge.
- f. Clause 22 amends section 36 to enable the Board of visitors to shorten the period of detention of children or young persons in need of care and protection detained in an approved school.
- g. Clause 23 inserts a new section 37A and clause 25 a new section 40A making provisions for alternate methods of treatment of children or young persons who do not respond to the ordinary methods.

CHAPTER III

YOUNG OFFENDERS IN SABAH

The information has been derived from reports by Probation Officers, Senior Welfare Officers, District Officers and other Officials; Ketua kampung, the Boys' own accounts and from information supplied by staff of the Remand Home/Probation Hostel at Mile 7½ Tuaran Road, Kota Kinabalu. Information thus obtained is by no means accurate.

Crime Among Boys in Sabah

Crime among boys in Sabah (ages 7 - 18) is not common. Unlike in so many other countries we do not find hooligans and organized crimes by the young in Sabah.¹ Such juvenile crime as there is tends to be committed by one person acting alone or by two or three friends and is largely confined to small thefts from dwellings or shops and a few sexual offences.² The number of girl offenders is extremely small. The reason for this seems to be that the traditional pattern of family life in most Asian families, which discourages an independent spirit in girls, seems to inhibit them from doing anything against the law, even when home conditions are very unsatisfactory. In fact, as mentioned earlier³ there is hardly any opportunity for girls in the more isolated and more primitive areas of Sabah to become deviants, for married life for them begins at the age of 12 or 13.

Women in Moral Danger

Quite recently there is evidence that women and girls in moral danger require services (from the State Welfare Services Department). The problems are manifold. Firstly, the only legislation in Sabah to protect the welfare of women and girls, the Protection of Women and Girls Ordinance, is obsolete. The new legislation which has been passed in Parliament recently has yet to be extended to Sabah. Secondly, no statistic is available to determine

1. The Report of the Seminar on Social work held in Kota Kinabalu in 1971 at p.67-77 indicated that there was evidence of gangs being formed.

2. Annual Report of Dept. of Welfare Services, 1974.

3. See Chapter 1 on Native Customary Law.

exactly the size of the problem and there is no staff to carry out this important task. Thirdly there is no existing institution for the reformation and rehabilitation of women and girls in moral danger.⁴

Causes of Criminal Delinquency

No one can say precisely what causes criminal delinquency in Sabah but it is widely accepted that disturbed family life is a precipitating factor. Of course some children are able to cope with a disturbed or unsatisfactory childhood without resorting to criminal activity and others who are delinquents may come from what are apparently highly satisfactory families. In Sabah, the proportion of broken-homes and disrupted and disturbed family life is becoming more and more alarming.

Age

The age at which many juveniles commit offences in Sabah is about fifteen years.⁵ The age is related to physical and mental development. Many of them are roamers who have left their families mainly because of the reasons given above. Not all of them could find means to support themselves so that those who were unable to support themselves had to resort to stealing. A boy becomes able to fend for himself at about the age of 13 or over.

Most Common Offence

As seen from Table G the most common offence is some form of stealing. The forms of thefts are, house-breaking, theft of personal belongings, neighbourhood's fowls, theft of bicycles, theft of fruit etc. Some of the offenders have committed previous offences and many of them have stolen a number of times before without being detected, while some are first offenders. There are no cases of senseless violence and destruction of properties as found in so many other countries.

⁴ Annual Report of the Department of Welfare Services(Sabah) 1972/3

The majority of the young offenders in Sabah are town boys, but a number of them are country boys who lived not far from a town. The latter were gradually attracted to town life and began to steal when they were unable to support themselves.

The young offenders that are referred to the Department of Welfare Services in Kota Kinabalu are physically normal.

Intelligence

The average intelligence of delinquent boys is probably below the average intelligence of a sample of Sabah boys. Their school records, opinion of the Probation officers and others who have known them before their committal to the Remand homes/Probation Hostel and their general behaviour while at home give an indication of their intelligence. The educational level of the boys is low. Most of them leave school after studying for only one or two years. The school records are far from satisfactory. The unequal development of education among the various people of Sabah creates complications. Generally the Chinese reach a higher level of education as compared with the Kadazans, Murut, Bajau and other indigenous people. The writer does not think that children of better education do not commit offences but education does help to reduce crimes among the young.

Weaknesses Of Character

The boys tend to be dishonest. They have bad habits and weaknesses of character, including laziness and quarrelsomeness. Some boys work as padi-planters, rubber-tappers, fishermen, apprentice mechanics, a prentice carpenters, as sho^e-assistants, house-boys and as building-labourers, etc. Many of the boys stole while they were out of work because they had no other means of supporting themselves except stealing. Very few were able to keep their jobs for long. Many boys while on probation had thrown away jobs with good prospects which had been found for them by Probation Officers. Delinquency of boys in Sabah must not be attributed to lack of employment for there are lots of jobs available, but to weak and bad habits, the results

of faulty upbringing. Their unsatisfactory family backgrounds is responsible for this. A high proportion of the boys had not been brought up by their own fathers and mothers. Some come from families where the father and the mother are living apart.

Some Features of Family Background

Some features of the family background of some delinquent boys in Sabah are:

1. Insufficient supervision and discipline because of lack of a father or mother, the sickness or age of the parents or guardians, or simply the inability of the parents to look after their children.
2. Quarrelsome parents thus bringing about unhappiness. Drunkenness or some other vice on the part of one of the parents, the boys being (or feeling themselves to be) unwanted are also responsible for the unhappiness.

Such boys have never had proper training, and have lacked the affection and sense of security which children need. They have grown up with faulty habits and weaknesses of character, and are emotionally unstable or immature. Idleness and pleasure-loving habits or dislike of their homes have driven such boys from rural areas to go to the towns and driven them to steal in order to support themselves.

We have seen that it is possible to point to certain circumstances common to the lives of many of the boys. These factors contribute to their delinquency. However, one must be careful about the reasons why a particular boy commits offences.

In order to evaluate or to answer the question 'Is juvenile delinquency in Sabah actually increasing?' we have to fall back on statistics. But even with the most accurate statistics, no one will ever ascertain the number of crimes committed. Some of the reasons for this are that the victims are at fault and fail to report crimes; many petty thefts and burglaries are not reported to the police because the victim is unaware of his loss or he prefers to sustain loss rather than go through the trouble of reporting and because there is little hope of restitution. But this is understandable because the standard of literacy in Sabah is low.

The following table shows the number of juvenile and young offenders of 7 - 18 years of age convicted of offences under the Sabah Penal Code in the years 1951 - 1969 (figures compiled by the Sabah Component Royal Malaysia Police):

TABLE A

Y E A R	N O .
1951	22
1952	32
1953	33
1954	35
1955	37
1956	78
1957	67
1958	66
1959	69
1960	80
1961	82
1962	101
1963	134
1964	128
1965	144
1966	128
1967	156
1968	259
1969	144

The following are the number of cases referred to the Department of Welfare Services from the Police, the court and parents/guardian in the years 1967-1974:

TABLE 3

YEAR	1967	1968	1969	1970	1971	1972	1973	1974
NO.	419	506	580	690	812	927	1061	1153

Some of the increase in the annual delinquency rate being accumulated is probably accounted for by the increase in efficiency and size of the police force which is detecting more and more crimes and successfully bringing more cases before the Juvenile Court. Even after this factor has been taken into account, there is evidence of greater criminal activity among the young in Sabah⁵

A random sample of the case histories of 93 juvenile offenders (all boys except for 2 girls) found guilty by the courts in Sabah during the period from 1967 to 1969 shows the following:

About 40% came from a family which was physically disrupted or suffering from the handicap of poverty and unemployment. In five cases both parents had died, 13 cases of boys having one parent dead, 11 had step-parents, 4 were unsatisfactorily adopted, 5 offenders committed the offence while away from their parents. In 8 cases the boys were not schooling or unemployed and there were 8 cases of severe poverty.

5. Annual Report of Department of Welfare Services (Sabah) 1974.

TABLE C

Number of Juvenile Offenders dealt with by the Department of Welfare Services by racial group and locality:

YEAR	NATIVES	CHINESE	INDIAN	OTHERS	TOTAL
1970	398	249	2	41	690
1971	87	27	2	6	122
1972		not available			
1973	650	411 ⁺			1061
1974	27	8	1	46	82

+ total for non-natives.

It might be of interest to make a comparison between the position during the pre-independence period and post-Malaysia period to show whether there has been any remarkable change in the nature of offences over the several years. Pre-merdeka 1958-62 figures and post-merdeka 1974 figures will be used for this purpose.

TABLE DYOUNG OFFENDERS IN SABAH 1958-1962

YPES OF OFFENCES	1958	1959	1960	1961	1962	TOTAL
Against lawful authority	8	13	18	32	15	86
Against public morality	1	2	3	2	1	9
Against the person	14	15	15	13	16	73
Against property	80	89	91	135	127	522
Other Penal Code offences	2	1	1	-	-	4
Offences under ordinances	36	27	20	14	21	118
TOTAL	141	147	148	196	190	812

The above table excludes minor offences and Road Traffic offences because neither of these two groups of offences would ordinarily be classed as crimes. Also excluded are offences in connection with immigration committed by aliens seeking to enter the state illegally. It can be seen that the number of offences committed by boys in Sabah showed an increasing trend during the 1958-62 period. Offences against property are not only by far the most numerous, they are also the only group which showed a serious increase since 1958. It must be remembered that during that period the figures included boys aged 18, 19 and 20.

TABLE E

YOUNG OFFENDERS IN SABAH

1974

Number of boys according to race:

RACE	NO
Kadazan (Dusun)	17
Malay	10
Chinese	8
India	1
Others	45
TOTAL	82

TABLE F

Classification of Offenders Committed to the
Remand Home/Probation Hostel according to age
and race:

A G B	MALAY	KADAZAN	CHINESE	INDIAN	OTHERS	TOTAL
Not more than 9 yrs.	0	0	0	0	0	0
- 10 yrs.	0	0	0	0	4	4
- 11 yrs.	0	0	0	0	5	5
- 12 yrs.	1	1	0	0	10	12
- 13 yrs.	1	2	0	0	7	10
- 14 yrs.	2	2	1	0	10	15
- 15 yrs.	2	5	2	0	6	15
- 16 yrs.	4	4	5	1	4	18
- 17 yrs.	0	3	0	0	0	3

TABLE GTYPES OF OFFENCES(1974)

OFFENCES	NUMBER
Offences against property	69
Offences against the person	3
Sexual Offences	3
TOTAL	75

TABLE HCOURTS' DECISIONS

DECISION	NO.
Warned and discharged	26
Discharged with surety & supervision	38
Henry Gurney School	6
TOTAL	75

It can be seen that almost 100% of the offences committed are offences against property.

Apart from cases brought before the court because of offences there were two cases classified as in need of care and protection and 1 case beyond parental control.

A total of 92 boys have been given care and protection during the year. Among them only seven were under conditional stay arising out of probation orders while the rest were remand cases. In comparison with 1973 the intake into the Remand Home has increased considerably being 82 as against 22 students. The discharge for the year was 53 students.

It can be seen from the above comparison that the most common offences during both periods are offences against property. The average age for the 1958-62 period was 15 with age range between 12 and 19 years while the average age for the 1974 year was also 15 but the age range was 10 to 17.

Changes in the attitudes of the Young

One can conclude that changes in the attitudes of the young are taking place but not so fast so as to cause anxiety that the national character of the Sabah people will be destroyed. Sabah Society is still, to a large extent, rural in character and still clinging to age-old traditions and culture. The present social order may continue for several decades more, so that one may be justified to expect a slow increase in the number of young offenders in Sabah in the near future. But with the steady economic development and increasing urbanisation in certain areas especially on the coasts, the social structures and norms are undergoing changes and the problem of delinquency is coming up.

Political Influence

It is also conceivable that political influence may affect the increases in crime among the young in Sabah. Acts of terrorism and violence can also weaken their sense of respect for the law. It might be of interest to note that the children and the unemployed youngsters

of the 60,000 Southern Philippines 'refugees', who are left at large in Sabah do in certain ways aggravate this hazard. The writer's observation during his attachment to the High Court at Kota Kinabalu convinced him that the increasing number of Filipino Youngsters coming before the Juvenile Court and the Magistrates court is becoming a serious menace to and a bad influence for the youngsters in Sabah. Forces which seek to lower the prestige of the government and to discredit recognised authority may also create a feeling of lawlessness among the young in Sabah. However there are certain aspects of life in Sabah which guarantee a slow increase in juvenile crime in the next several decades. Family ties are still strong amongst most Sabah people. Among some native communities where parental discipline seems loose, public opinion in the village operates powerfully against anti-social tendencies in the young. One common national character of the Sabah people is the desire to conform to established customs, respect for authority and a sense of shame at any deviation from an accepted code of conduct.

CHAPTER IV

PREVENTION OF CRIME BY THE YOUNG IN SABAH

The strengthening of parental responsibility is one of the ways by which the amount of juvenile crime can be reduced.

Religion

In Sabah, religion is a powerful influence which can strengthen family ties and teach the mutual responsibilities of parents and children although this may depend on one's religious view of the nature of causation, fate and free will. Formation of organisations such as the Boys Scout movement which teach respect and obedience to parents, and associations like the Women's Institute which aims at giving women greater understanding and skill in their work as home-makers should be encouraged.

Family disputes leading sometimes to the separation of husband and wife, and unhappiness in the house caused by drunkenness or gambling, can have a serious effect on the children. Troubles do happen sometimes and therefore it is necessary that there should be means of reconciling a quarrelling husband and wife and bringing to bear the influence of society on an erring parent. In the rural areas of Sabah as mentioned in Chapter 1, the Ketua Kampung plays an important role as a respected counsellor who uses his authority to resolve or forestall marital difficulties. The maintenance of the headman's position can help to uphold family life. Indirectly, juvenile crime can then be prevented.

In many families in Sabah the parent are illiterate while the children have received at least some schooling. This situation creates a wide difference in educational level between parents and their children, and weakens parental authority. The situation is improving now that primary education is universal and the number of illiterate parents is declining. The growth of social services may result in lessening of

parental responsibility. Education, for example, however necessary and desirable will do some damage if parents start thinking that they can transfer to the schools the duty of giving moral training to their children.

Education

Although it is no handicap to grow up illiterate in an illiterate community it is a serious handicap to grow up illiterate in a literate community. It reduces the opportunity for employment, limits understanding of public life, and may produce a sense of inferiority. It is a very facile and superficial view which supposes that the more primary and secondary education there is the less juvenile crime there will be.

Police and Public

The importance of police consists not only in their work of arresting criminals but in the preventive effect on those who would otherwise commit offences. The thought that an offence might be discovered by the police acts as a deterrent. It is important that the probability that a crime will be detected is not a matter for the police alone but also the duty of every member of the society. Public vigilance and cooperation must be increased.

Treatment of Young Offenders

Like most developing countries, Malaysia is not only a young nation but is also populated by a majority of young people. In fact about 64% of the population is below the age of 25 years. The greatest challenge facing our country now is the problem of youth and future generations. Accordingly our national planning must be biased towards youth and their problems, for in less than a generation, these young people will have assumed important roles in the nation's political, economic and social life.¹

1. Report on the Seminar on Social work, Kota Kinabalu 1971, p.29

Juvenile delinquency represents a series of social problems which affect the community as a whole, and as such must be the concern of the entire society and community and not merely left to the government and its agencies to deal with. The State can and must provide the leadership and professional expertise but no programme for the prevention and control of juvenile delinquency will succeed without the participation of the community and every parent must share the task. The juvenile himself must be involved in this basic problem of young people.²

It is worth noting that the 4th United Nations' Congress on the Prevention of crime and the Treatment of Offenders held in Japan in 1970 when the subject of public participation in the prevention and control of crime and delinquency was discussed there was a complete unanimity and not one of the 1100 participants from 95 nations dissented from the importance of bringing the public to a closer knowledge of, participation in, and collaboration with governmental efforts in the prevention of crime and delinquency.³

Many people in our society are prejudiced against offenders. To some the administration of criminal justice means, principally apprehension, detention and imposition of sentence intended primarily as punishment. They continue to have this attitude towards juvenile delinquents even after they have paid their debt in a detention place and their return to the community is made difficult. During recent years, however, a radical change has taken place in the administration of criminal justice; the social background of the juvenile offenders is considered by Magistrates, suspended sentence or probation is an alternative choice to imprisonment and where detention is necessary reformatory centres are provided and where vigilant supervision is required the services of the Probation Officers are available.⁴

2. Report of the Seminar on Social Work and the Community, K Kinabalu 1971, p.29

3. Ibid p.30

4. "Juvenile Delinquency" an article published by the Department of Welfare Services Kota Kinabalu; also Department of Welfare Services Annual Report, 1972/.

Families having marital disharmony must warn themselves that if they do not solve their grievances as soon as possible their children will suffer.

University of Malaya

CHAPTER V

PROBATION AND AFTER-CARE

The acceptance of probation service in Sabah is a striking evidence of the extent to which the idea of help and treatment rather than punishment is recognized as a means towards rehabilitation. To provide for the treatment of juveniles as may be directed by the courts, the Ministry of Welfare Services has the following services: Probation and after-care.

Probation

Probation is something like a suspended sentence secured by an order made by the Juvenile Court requiring the person to be under the care and supervision of a Probation Officer and containing terms requiring the probationer to be of good behaviour during the period of probation. If he fails to be of good behaviour he can be punished not only for the original offence but also for any subsequent offence he may have committed.¹

Probation can be used in a very wide range of offences and the principle on which the court relies, in placing the offender on probation, is to have regard to the circumstances including the nature of the offence and the character of the offender.² Probation is a method of treatment which embodies the whole concept of the juvenile court.² Perhaps the most important element in this measure is the fact that the offender is given an opportunity to lead a normal life in the community without disrupting his family life while undergoing individual guidance and treatment to adjust himself to the demands of the society. The duty of the Probation Officer in this regard is 'to advise', assist and befriend' ³ the probationer. To do this the Probation Officer is required to visit the probationer's home, observe his behaviour and general mode of life, change the attitude and behaviour of difficult parents, arrange schooling and organize recreation, find foster homes and obtain employment if necessary, and render all

1. Malaysia Year Book, 1972, p.452

2. Ibid

assistance that he may need. In this connection the work of the Probation Officer in Sabah involves travelling to almost inaccessible interior parts of Sabah to look into the case of one or two isolated cases. In spite of the negligible number of young offenders from the interior and more primitive areas more Probation Officers are required to look into this matter.

Probation of Offenders in Sabah

Unlike other welfare matters, Probation services are a Federal responsibility under the Malaysian Constitution.⁴ Nonetheless, in Sabah, they are administered by the State Department of Welfare Services. The finance is entirely from Federal sources.⁵

The Federal Government's responsibility in respect of social welfare matters in Sabah can be briefly described as providing reformatory services for youthful offenders, children and young persons in need of care and protection and women and girls in moral danger. These services are statutorily governed by the Juvenile Courts Act, 1947.⁶

To facilitate the administration of this Act in Sabah, a Remand Home/ Probation Hostel was built in 1971. This institution caters for 24 boys between the ages of 7 and 13 years. Only certain types of boys can be placed there. For similar purpose the Prisons Department runs a Henry Gurney School for youthful offenders between the ages of 14 and 17 years.

There are no institutional services for women and girls in moral danger, however, young women and girls falling into this category can be assisted through the state-run Counselling and Advice section of the Department of Welfare Services.⁷

4. Annual Report of Department of Welfare Services, Sabah, 1972/3

5. Ibid

6. Ibid

7. Ibid

Under the Juvenile Courts Act, all cases will have to be referred to the Welfare Services Department for Probation Officer's reports and subsequent supervision and detention or aftercare.⁸

Remand Homes and Probation Hostels

The Remand Home/Probation Hostel was built in 1971. It is at Mile 7½ Tuaren Road, about 7½ miles from Kota Kinabalu. This institution provides facilities for juveniles who are on remand pending disposal of their case. During the period of his remand the offender is kept under observation and report is made of his personality, character and social history for inclusion in the Probation Officer's report to the Juvenile Court to enable the latter to determine what kind of treatment would best suit the young offender's needs. Facilities are also provided in the hostel for care, training and education of the probationers who have been committed into the hostel as a condition of Probation Order. While in the hostel this category of juveniles is encouraged to continue with their schooling, and to learn to have respect for authority or to seek outside employment. Two other categories of juveniles also reside in the hostel, those on transit to approved school and those who are on licence or after-care.

Approved Schools

There is no Approved School in Sabah but arrangement is made with the government of Sarawak whereby Sabah young offenders can be sent to the Approved School in Kuching. The Remand Home in Kota Kinabalu is not sufficient to meet the needs of the increasing number of young offenders in Sabah and young offenders continue to be sent to the Boys Home in Kuching. Previously young offenders used to be sent to Singapore also.

The approved school tries to train its pupils in group living within which they can be happy, able to think for themselves, and eventually able to stand on their own feet. It upholds the concept that happiness, love and security are important to these children who may never have experienced

8. Ibid

all of these. Vocational training is provided in carpentry, motor mechanics, and agricultural pursuits. The aim of vocational training is not only to provide training for employment on leaving schools, but also to help the boys to persevere and achieve success in activities which depend on hard work and industry. The essential social intercourse is often found by their participation in the healthy activities conducted by the youth organisations and associations.

But it is a sad reflection that, although schools and institutions of this type have been in existence for many years, especially in West Malaysia, nothing much has been published on the effectiveness of these schools which can throw light on the problems of delinquency and provide a convincing programme for remedial treatment.

LICENCE AND AFTER-CARE

The treatment of the offender is not considered complete until he has undergone a period of after-care. On discharge from the approved schools, the young person generally faces many difficulties which he can overcome only with the help of Probation Officers and the sympathetic community. It is during the after-care period of adjustment that the participation of the community is needed. The acceptance of the young persons from such institutions by the community, the offering of employment or accommodation coupled with understanding of his problems is vital to his successful rehabilitation.¹⁰

Probation Officers are legally obliged to render after-care to persons released from approved schools.¹² The Juvenile Courts Act defines the period as three years after the expiration of the period of his detention

9. Malaysia Year Book, 1972, p.451-457

10. Adnan Hj. Abdullah, Juvenile Delinquency and the Community...
Report of the Seminar on Social Work and the Community,
held in Kota Kinabalu in 1971, p.29.

12. Reformatory Field Services (Probation Services) policies and
procedures - a circular issued by the Dept. of Welfare Services
in Kota Kinabalu, p.4

or until he attains the age of 18 years whichever may be the shorter period.¹¹ The amendment to the same section provides that every juvenile shall, after the expiration of his period of detention at an approved school be under the supervision ('after-care') for a period of one year. The effect of this provision read together with the amended definition of 'juvenile' will be to extend the period of supervision for one year from the date which that period of detention expires, for every person discharged from an approved school irrespective of his age at the date of his discharge.

11. Section 31, Juvenile Courts Act, 1947; Clause 20 Juvenile Courts (Amend.) Act, 1975.

CHAPTER VI

CONCLUSION

With the extension of the Juvenile Courts Act to Sabah in 1972, the administration of justice for the young in Sabah can now be said to be in accordance with established practice in many parts of the world. The facilities for the administration of the provisions in the Act are by no means adequate as yet.

It was established in Chapter I that prior to the coming of the Europeans there was no problem of juvenile delinquency in Sabah. In fact among the more primitive natives of Sabah the term 'juvenile delinquency' is non-existent. But if we look at the period after the second war the problem of young offenders began to appear. Looking at the Tables in Chapter III it appears that juvenile delinquency is increasing in Sabah. That the juvenile offenders are mostly boys and the most common offence is offence against property. Most of the offenders, as revealed in the figures, are natives. It is mentioned in Chapter I that young offenders are not common among the primitive natives but the data have shown otherwise. This can be explained by the fact that the natives constitute the majority of the population of Sabah and the number of delinquents is small compared with the native population. The same explanation is true for the increase in the number of young offenders in Sabah. According to the Population Census in 1971 more than half of the 700,000¹ people of Sabah are below the age of 25 years and therefore the adjudged delinquency seems smaller compared with the juvenile population. That does not mean, however, that the authorities in Sabah should remain satisfied with the present situation.

Nothing much has been done about further improving the services available at this moment but the State Government is aware of the need to look into this problem before it is too late.

1 The population of Sabah in 1975 was estimated to be about 747,000
(Far Eastern Economic Review, October 3)

One of the many topics discussed during the Seminar on Social Work and The Community held in Kota Kinabalu in 1972¹ was 'Juvenile Delinquency'.

Some of the questions put forward in the workshop dealing with the topic of juvenile delinquency were:

1. What types of juvenile delinquency are found most frequently in Sabah?
2. Discuss the ways in which the Government has tried to combat and assist the offenders and their families?
3. Does the group (workshop group) feel that environment, poverty and physical defects are contributing factors in delinquency?
4. What kind of preventive work do you think could be done, in Sabah, - where delinquency is slight - before the changes of progress increase it? Has there in fact been an increase in the last ten years?

The following is the consolidated report:

The Probation service given at present by the Welfare Department was described and discussed quite fully. Theft appears to be the most common juvenile crime here (i.e. Sabah). So far, there seems to have been little increase in actual offences, but there is evidence of 'gangs' being formed, particularly in the town areas. It was felt that the Youth and Community Development Schemes might very well succeed in channelling some of the energy of the would-be delinquents into more rewarding activities. The factors of environment, poverty and physical defects were shown by numerous examples to be contributory to delinquency.

Resolutions

1. That the Youth Organisations here endeavour to provide enough interesting activities, for the boys in particular as a preventive measure against delinquency.
2. That the schools might offer some counselling help for those children with home problems by employing school social workers.
3. A Juvenile Welfare Committee to provide a special service to those who are potential delinquents.¹

Resolutions 1 and 3 are now in the process of being implemented but resolution 2 awaits to be carried into effect.

It is now more than four years since the making of the above recommendations and much has been done as discussed in the earlier chapters. It is possible to anticipate that the Sabah authorities may well be able to maintain if not reduce the amount of juvenile crime in Sabah after having made an early start in its effort to combat delinquency in Sabah.

1. Report of the Seminar on Social Work and the Community, Kota Kinabalu, July 1971 pp.67 - 77.

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